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STATUTORY COMMENT

Indigent Defendants and Criminal Justice

On March 18, 1963, the Supreme Court of the United States handed down its decision in *Gideon v. Wainwright*¹ overruling *Betts v. Brady*.² The result caused no surprise, for the *Gideon* case was one of the most widely predicted³ (and least criticized)⁴ overruling decisions in the recent history of the Court. But there were elements of surprise. First, all nine members of the Court concurred in overruling *Betts v. Brady*. Second, the opinion of the Court, delivered by Mr. Justice Black, based the decision on much broader grounds than was necessary, as can be seen from the concurring opinion of Mr. Justice Harlan.⁵ Third, the Court on the same day

¹ 372 U.S. 335 (1963).

² 316 U.S. 455 (1942).

³ See BEANEY, *THE RIGHT TO COUNSEL IN AMERICAN COURTS* 234 (1955); Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 HARV. L. REV. 441, 524 (1963); Douglas, *Foreword, Right to Counsel Symposium*, 45 MINN. L. REV. 693 (1961); Kamisar, *Betts v. Brady Twenty Years Later: The Right to Counsel and Due Process Values*, 61 MICH. L. REV. 219 (1962); Kamisar, *The Right to Counsel and the Fourteenth Amendment: A Dialogue on "The Most Pervasive Right" of an Accused*, 30 U. CHI. L. REV. 1 (1962); Lawlor, *What Computers Can Do: Analysis and Prediction of Judicial Decisions*, 49 A.B.A.J. 337 (1963); Marden, *Equal Access to Justice: The Challenge and the Opportunity*, 19 WASH. & LEE L. REV. 153, 156 (1962); cf. Harp, *Appointment of Counsel for Indigent Defendants*, 19 WASH. & LEE L. REV. 233, 236 (1962). See also Allen, *The Supreme Court, Federalism, and State Systems of Criminal Justice*, 8 DE PAUL L. REV. 213 (1959).

⁴ See Beane, *Right to Counsel: Past, Present, and Future*, 49 VA. L. REV. 1150, 1154-55 (1963); Lewis, *Supreme Court Ruling Steps Up Legal Aid for Poor Defendants*, N.Y. Times, June 30, 1963, § 1, p. 39, col. 1. The states were to a large extent foreclosed from criticism in that the Attorney General of Florida, representing the respondent, invited the attorneys general of the other states to submit amicus curiae briefs on the question of overruling *Betts v. Brady*. Alabama submitted the only other brief favoring retention of the *Betts* rule, though the Attorney General of North Carolina noted that he had read and adopted the Alabama brief. Amicus Curiae Brief for the State of Alabama, p. 1, *Gideon v. Cochran, reported sub nom. Gideon v. Wainwright*, 372 U.S. 335 (1963). Twenty-two states favored overruling *Betts*, with attorneys general from twenty-one states joining in the amicus curiae brief of the Attorney General of Massachusetts. Brief for the State Government Amici Curiae, unnumbered pages following title page, *Gideon v. Cochran, reported sub nom. Gideon v. Wainwright, supra*.

⁵ See note 9 *infra*.

delivered opinions of high importance in five other cases concerning criminal procedure. The collective effect of these decisions has caused one North Carolina trial court judge to say:

The decisions of the Supreme Court of the United States on March 18, 1963, all contained in one advance sheet of the Supreme Court Reporter . . . , probably will have the greatest impact on state court criminal procedure of any event in our lifetime, if not in the history of our country. *Gideon v. Wainwright* is only one of a sextet of decisions which seem to question the *orderliness, the finality and the fairness* of most of the actions of the judicial systems of the states⁶

The 1963 General Assembly of North Carolina, which was in session on March 18, passed three acts⁷ and a Senate Resolution⁸ as a direct result of the new federal requirements outlined in the decisions. The North Carolina legislation will here be discussed against the background of the cases which prompted it. Four of the cases dealt directly with state handling of indigents caught in the processes of criminal procedure, either as defendants or as prisoners challenging the legality of their imprisonment: *Gideon v. Wainwright*,⁹ *Douglas v. California*,¹⁰ *Lane v. Brown*,¹¹ and *Draper v.*

⁶ Address by Judge McKinnon, North Carolina Conference of Superior Court Judges, October 25, 1963, on file in Institute of Government Library. One's first reaction is to consider this something of an overstatement, but it may be true, at least in North Carolina, which had adopted the exclusionary rule prior to *Mapp v. Ohio*, 367 U.S. 643 (1961), and was little affected by that decision. See N.C. GEN. STAT. § 15-27 (1953) and N.C. GEN. STAT. § 15-27.1 (Supp. 1963). Moreover, *Mapp* has its main effect upon police procedures rather than on court procedure itself.

⁷ N.C. Sess. Laws 1963, chs. 954, 1080, 1180. In addition, a local act introduced early in the session repealed a 1941 local act for Franklin County which had limited compensation of appointed counsel in capital cases to \$100. N.C. Sess. Laws 1963, ch. 162.

⁸ S. Res. 660, adopted June 18, 1963.

⁹ 372 U.S. 335 (1963). An indigent defendant had been denied court-appointed counsel on the ground that state law only permitted assignment of counsel in capital cases. The defendant had been charged with the felony of breaking and entering with intent to commit a misdemeanor and had been sentenced to five years' imprisonment. On certiorari the United States Supreme Court overruled *Betts v. Brady*, 316 U.S. 455 (1942), as wrong when decided, and held that the sixth-amendment right to counsel (interpreted in *Johnson v. Zerbst*, 304 U.S. 458 (1938), as requiring assignment of counsel for indigent criminal defendants in federal courts) is a fundamental right of a defendant and part of the "concept of ordered liberty" embraced by the due process clause of the fourteenth amendment. See *Palko v. Connecticut*, 302 U.S. 319, 325 (1937).

The opinion of the Court laid no stress upon the fact that *Gideon* had

State of Washington.¹²

The other two cases have their direct impact on the federal courts and concern postconviction remedies to be granted state prisoners in the federal district courts: *Fay v. Noia*¹³ and *Townsend v. Sain*.¹⁴ Although these two cases are not concerned with indigency as such

pleaded not guilty or that his felony conviction resulted in a substantial prison term. The concurring opinion of Mr. Justice Douglas, 372 U.S. at 345, laments that the entire Bill of Rights has not yet been incorporated into the due process clause of the fourteenth amendment, but disputes Mr. Justice Harlan and takes the position that this case represents an incorporation of the full sixth-amendment right to counsel provision. Mr. Justice Clark's concurring opinion, 372 U.S. at 347, avoids the question of incorporation, and asserts that any distinction between capital and noncapital cases is not a rational one in that the fourteenth amendment applies to a deprivation of "liberty" as well as to deprivation of "life." Mr. Justice Harlan's concurring opinion, 372 U.S. at 349, takes the position that since *Betts* we have evolved to a stricter standard of due process under the *Palko* "concept of ordered liberty" and that the decision holding the right to counsel fundamental does not involve any mechanistic incorporation of any of the provisions of the Bill of Rights.

For further discussion of implications in *Gideon*, see notes 15 & 53 *infra*.

¹⁰ 372 U.S. 353 (1963). The Court held in a six-to-three opinion that an indigent defendant could not be denied court-appointed counsel on his first appeal as a matter of right from conviction in the trial court, even though the appellate court had examined the record and had determined that no good could be served by the appointment of counsel. This was in compliance with a state procedural rule requiring appellate courts to make an independent investigation of the record to determine whether it would be of advantage to the defendant or helpful to the court for counsel to be appointed an indigent appellant. The Court thought this was discrimination against the indigent because the rich man would have the right to require the appellate court to listen to argument of counsel before deciding on the merits.

¹¹ 372 U.S. 477 (1963). The Court held that a procedure which in effect worked to deny a transcript to an indigent prisoner wishing to appeal a denial of a petition for a writ of error coram nobis was a denial of equal protection of the laws. The prisoner had been represented by a public defender at the hearing in the trial court, and that defender was empowered by law to represent the prisoner on appeal to the state supreme court and to secure a free transcript for that purpose. However, the public defender refused to do so because he thought the appeal would not be successful, and when the prisoner attempted to secure a free transcript in order to represent himself on appeal, his application was denied.

All nine justices concurred in the reversal, but Justices Clark and Harlan would have affirmed had there been some judicial review of the reasonableness of the defender's decision not to appeal.

¹² 372 U.S. 487 (1963). The Court held in a five-to-four decision that an indigent defendant was entitled to a record of sufficient completeness for adequate consideration of the errors assigned on appeal to the state supreme court and that a trial judge's written findings of fact, even though extensive, were not sufficient when they did not discuss or set out any of the specific evidence or testimony in the case upon which the defendants were basing their assignments of error.

¹³ 372 U.S. 391 (1963), noted at p. 353 *infra*.

¹⁴ 372 U.S. 293 (1963), noted at p. 361 *infra*.

and do not directly affect state procedure, they undoubtedly will have a great impact in both areas.¹⁵

¹⁵ The liberalization of federal postconviction review for state prisoners indicated in the two cases may have a primary effect of forcing state trial courts to keep much more meticulous and detailed records—showing affirmatively that defendants were accorded all of their constitutional rights. Securing counsel for indigents and granting counsel sufficient time to prepare will be one of the central issues. Cf. Note, *Effective Assistance of Counsel*, 49 VA. L. REV. 1531 (1963).

In addition as state prisoners are required to exhaust state remedies still open to them before entering federal district court, there will likely be an increase in the use of state postconviction remedies.

It seems clear that for a while there will be a flood of postconviction cases from prisoners who were tried and convicted without the assistance of counsel. See National Ass'n of Attorneys General, Increased Rights for Defendants in State Criminal Prosecutions, June-July 1963, at 28 (unpublished supplement, distributed at 1963 meeting, on file in Institute of Government Library) [hereinafter cited as National Ass'n of Attorneys General]: "The direct impact upon the state of Florida is that *Gideon* now opens the door for over 4,000 post-conviction assaults. According to the most recent figures, there are some 8,000 prisoners in the Florida Prison System. Of this number, some 4,542 were not represented by counsel." In North Carolina, as an aftermath of the *Gideon* case, over 600 prisoners had actually applied for new trials on the ground of denial of counsel by October 1963. Raleigh News & Observer, Oct. 31, 1963, p. 38, col. 4.

There appears to be little doubt but that *Gideon* will be applied without regard to whether the trial without counsel occurred before or after March 18, 1963. *Pickelsimer v. Wainwright*, 375 U.S. 2 (1963), is one of several cases summarily vacating judgments denying postconviction relief where there were pre-1963 trials without counsel, and remanding to the state court for further consideration in the light of *Gideon*. Despite the lone dissent of Mr. Justice Harlan in *Pickelsimer* stating that the Court has not squarely faced the question, these dispositions make it appear certain that *Gideon* is to be given retrospective effect. The opinion of the Court in *Gideon* stressed the right-to-counsel ruling in *Powell v. Alabama*, 287 U.S. 45 (1932), as if *Betts v. Brady* were a departure from the principles stated in that 1932 case. If *Betts* was wrong when decided, then it is only logical for the overruling decision to have retroactive force. As to recent analogous cases, the Fourth Circuit has given *Mapp v. Ohio*, 367 U.S. 643 (1961), retrospective effect in *Hall v. Warden, Maryland Penitentiary*, 313 F.2d 483 (4th Cir. 1963), and the rule in *Griffin v. Illinois*, 351 U.S. 12 (1956), requiring that transcripts of the record be furnished indigent defendants on appeal, is also being given retrospective application. See *Eskridge v. Washington State Board of Prison Terms and Paroles*, 357 U.S. 214 (1958).

As a majority of prisoners will be indigent, there will be a further problem of assigning counsel in the postconviction review hearings themselves. The conclusion is inescapable (though not yet squarely held) that indigent prisoners would have to have counsel assigned them in every instance in which a prisoner with money would have the right to representation through counsel in connection with his postconviction review. See National Ass'n of Attorneys General 34.

Another problem in the area of postconviction remedies concerns sentencing a defendant who is successful in obtaining a new trial but who is

There was some sentiment in the General Assembly for public-defender legislation. The proponents of the approach which was accepted, however, argued that public-defender legislation was too controversial and the factors involved too complex to be disposed of during the remainder of the 1963 session. They sponsored, at least as an interim measure for the 1963-1965 biennium, an appropriation to compensate court-appointed counsel. Before the end of the session, though, a Senate Resolution¹⁶ was adopted instructing the newly-created Legislative Council¹⁷ to make or cause to be made a study with respect to the advisability of establishing a public-defender system in North Carolina, and to report to the 1965 General Assembly.

The major act of the session was Chapter 1080¹⁸ which provides for:¹⁹

the appointment of counsel by superior court judges in all felony cases, and permits appointment in the discretion of the judge²⁰ in misdemeanor cases. Defendants may waive appointment of counsel, except in capital cases. A defendant without counsel pleading guilty must be informed of the nature of the charge and the possible consequences of his plea. As a condition of accepting the plea of guilty from an unrepresented defendant, the judge must determine that the plea was freely, understandingly,²¹ and

convicted again. May the sentence be longer than the original one? Should any credit be given for the time already served? Suppose the total effect of the subsequent sentence, when added to the time already served, is a term of imprisonment longer than the statutory maximum? For a case with facts raising these issues, but not discussing the possible constitutional problems inherent in them, see *State v. Williams*, 261 N.C. 172,—S.E.2d—(1964).

¹⁶ S. Res. 660, adopted June 18, 1963.

¹⁷ N.C. Sess. Laws 1963, ch. 721, enacting N.C. GEN. STAT. §§ 120-30.1 to -30.9 (Supp. 1963).

¹⁸ N.C. Sess. Laws 1963, amending N.C. GEN. STAT. §§ 15-4.1, -5 (Supp. 1963), and adding provisions codified as N.C. GEN. STAT. §§ 15-5.1 to -5.3 (Supp. 1963).

¹⁹ The author has taken the liberty of here reproducing a part of an article which he wrote for the Institute of Government monthly publication, *Popular Government*. Watts, *Criminal Law and Procedure*, *Popular Government*, Sept.-Oct. 1963, pp. 15-16. Citations which were included in the author's original text have been removed and placed in the footnotes in standardized form. Furthermore, some footnotes have been added. The author has also made minor changes in order that the text may fit better within the context of this comment. These minor changes have not been indicated. [Ed.]

²⁰ Although N.C. GEN. STAT. § 15-4.1 (Supp. 1963) does not repeat the phrase "superior court judge" in authorizing "the judge" to appoint counsel in misdemeanor cases, the context makes it fairly apparent that the entire section refers to procedure in the superior court; only.

²¹ Erroneously rendered as "understandably" in original.

voluntarily made, without undue influence, compulsion or duress, and without promise of leniency. In case of appeal to the Supreme Court of North Carolina, the judge is to appoint counsel for the appeal or continue the services of counsel already appointed.

Fees for services of counsel are to be fixed by the court, in accordance with the time consumed, the nature of the case, and the amount of fees usually charged for such cases in the county or locality. These fees are to be paid by the State of North Carolina, but the amount allowed is to be entered as a judgment against the defendant so as to constitute a lien as provided in the general law pertaining to judgments. Funds collected under such judgments are to be deposited in the State Treasury. The act appropriates \$500,000 for each fiscal year of the biennium 1963-1965 to pay the costs of administering the act. In partial compensation, though, the act taxes against criminal defendants in the superior courts an additional five dollars in court costs. Four dollars goes to the State Treasury, and one dollar goes to the general fund of the county.²²

In the past when appointed counsel were only compensated in capital cases, the county paid the attorneys' fees as well as other costs.²³ The scheme now settled upon places the cost of administering the act and of paying counsel fees on the State; the counties, however, continue to bear certain expenses. The act stipulates that the regular and ordinary court costs are to be paid by the county as now provided by law. In addition, the county is charged under the act with making available the trial transcript and records required for an adequate and effective appellate review in case an appeal is taken by an indigent defendant.

The meaning of this last provision is amplified by consideration of Chapter 954,²⁴ which added a new paragraph in G.S. 15-181. That section provides that where a criminal defendant is wholly unable to give security for costs to appeal to the Supreme Court of North Carolina, the judge may allow appeal as a pauper. It further provides in cases begun on a capital indictment for payment by the county, on order of the judge, of the cost of obtaining a transcript of the proceedings and of preparing the requisite copies of the record and briefs required to be filed in the Supreme Court. The new act adds a similar provision for such payment by the county in appeal cases either (1) of felony conviction or (2) begun upon indictment^{24a} charging a noncapital

²² Although the act is not explicit, the extra costs are clearly to be taxed only where the individual defendant is charged with payment of costs, and not in the event the county pays half costs under the provisions of N.C. GEN. STAT. § 6-36 (1953).

²³ N.C. Sess. Laws 1937, ch. 226.

²⁴ N.C. Sess. Laws 1963.

^{24a} The statute omits mention of prosecution on an information. See N.C. GEN. STAT. § 15-140.1 (1953).

felony (with conviction of lesser offense). The order of the judge is, in terms, discretionary upon his finding that the defendant is indigent where there is not a capital charge, but cases decided by the Supreme Court of the United States make it clear that there is no such discretion if indigency is in fact found.²⁵

Chapter 1080 added G.S. 15-5.1 providing that the Council of the North Carolina State Bar has authority to make rules and regulations "relating to the manner and method of assigning counsel, the practice of the courts with respect to determination of indigency, the waiver of counsel and related matters, the adoption and approval of plans by any district bar regarding the method of assignment of counsel among the licensed attorneys of said district and such other matters as shall provide for the protection of the constitutional rights of all indigent persons charged with crime and the reasonable allocation of responsibility for the defense of indigent defendants among the licensed attorneys of this State: Provided, however, that no such rules and regulations shall become effective until certified to and approved by the Supreme Court of North Carolina."

On July 19, 1963, the Supreme Court certified a set of regulations and approved forms that had been drafted by the Council.²⁶

Under the regulations, any district bar may adopt a plan for naming and designating the attorneys to serve as assigned counsel. Such plan may be applicable to the entire district, or separate plans may be adopted for use in each separate county within the district. The plan of the bar is to be certified to the clerk of the superior court of each county in which it is applicable. Judges are to appoint counsel in accordance with the plan unless they deem it proper in the furtherance of justice to appoint "some lawyer or lawyers residing and practicing in the judicial district, who is or are not on the plan or list . . ." ²⁷ The regulations next provide: "No attorney shall be appointed as counsel for an indigent defendant in a court of any district except the district in which he resides or maintains an office *except by consent of counsel so appointed.*" ²⁸

The regulations apparently contemplate that in some districts not all lawyers will appear on the list to be appointed, since they provide for appointments of others off the list. They do not pro-

²⁵ See *Draper v. State of Washington*, 372 U.S. 487 (1963); *Lane v. Brown*, 372 U.S. 477 (1963); *Douglas v. California*, 372 U.S. 353 (1963).

²⁶ N.C. REGULATIONS RELATING TO APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS (1963). These regulations and forms are set out in the Appendix to Volume 259 of the *North Carolina Reports*.

²⁷ N.C. REGULATIONS RELATING TO APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS § 4.2 (1963).

²⁸ N.C. REGULATIONS RELATING TO APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS § 4.3 (1963). (Emphasis added.)

vide specifically for appointment by the judge of someone on the list out of turn, but it seems quite certain that the judge has this power where special circumstances and considerations of justice require it. And, as noted, he may even appoint a lawyer from outside the district with that lawyer's consent.

Chapter 1080 states that "the judge shall appoint counsel as soon as possible and practicable to the end that counsel so appointed may have adequate notice and sufficient time to prepare for a defense."²⁹ The regulations of the State Bar do not flesh out any procedure designed to secure early appointment of counsel. The selection methods stipulated in the plans of the district bars can probably incorporate early screening methods to a limited extent, but there are certain restrictions in the regulations. They require that the defendant complete and sign under oath an affidavit of indigency prior to appointment of counsel.³⁰ The judge is required—prior to the call of the case—to make a reasonable inquiry of the defendant *personally* under oath as to the statements in the affidavit.³¹ Then, apparently the judge may appoint counsel.³²

The regulations as they are now written raise several problems. In at least one place they specify the *trial* judge³³ in treating an aspect of the power to appoint counsel. They do not, in

²⁹ Codified in N.C. GEN. STAT. § 15-4.1 (Supp. 1963). Appointment of counsel at the earliest possible moment is one of the primary requisites of effective legal aid. See ASS'N OF BAR, CITY OF NEW YORK, EQUAL JUSTICE FOR THE ACCUSED 60-61 (1959); Allison, *Legal Aid for the Indigent Accused of Crime*, 27 Federal Probation, 46, 47, col. 2 (Mar. 1963). Cf. White v. Maryland, 373 U.S. 59 (1963) (right to counsel at preliminary hearing prior to arraignment when the hearing is "a critical stage in a criminal proceeding").

³⁰ N.C. REGULATIONS RELATING TO APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS § 2.1 (1963).

³¹ N.C. REGULATIONS RELATING TO APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS § 2.2 (1963). N.C. GEN. STAT. § 15-5.3 (Supp. 1963) stipulates that "any defendant making a false affirmation in regard to the question of indigence" shall be guilty of perjury and punished as provided in N.C. GEN. STAT. § 14-209 (1953) (felony). The false affirmation might be made by the defendant either in the written affidavit required or when examined personally under oath.

³² See N.C. REGULATIONS RELATING TO APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS § 2.4 (1963). Section 2.4 literally says that the affidavit and the personal examination of the defendant are required before the judge determines whether the defendant is in fact *indigent*. Section 2.1 requires the affidavit before appointment of counsel. Thus it might be possible under a strained interpretation of the regulations to hold that a judge may appoint counsel upon the affidavit subject to a final determination of indigency.

³³ N.C. REGULATIONS RELATING TO APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS § 4.2 (1963) provides: "[A]ppointments... shall be made in conformity with such plan or plans, unless the *trial* judge in the exercise of his sound discretion deems it proper...." (Emphasis added.)

terms, prohibit the resident judge (when he is not the trial judge) from making appointments, but the general scheme of the regulations implies a single trial judge in control of the appointment process. There is, of course, good reason for such centralization; otherwise, some lawyers might be called upon by different judges with an unfair frequency. Nevertheless, in counties with short and infrequent terms of court, a defendant might be forced to suffer a great deal of hardship.

If arrested several months before the term of court, he would have to wait till the term to get a lawyer appointed. Then he would be faced with the choice of immediate trial, perhaps before the lawyer has a chance to prepare adequately, or of seeking a continuance till the next term of court—several more months. Since it is likely that an indigent defendant would not be able to post a bond in any sizeable amount, the defendant could well spend the entire time in jail.⁸⁴

In one minor respect the regulations appear to go beyond the terms of the statute, though in a fashion so eminently reasonable that it is difficult to conceive of a court striking them down on this point. G.S. 15-4.1 specifies that defendants waiving representation by counsel should sign a written waiver. The regulations provide for the written waiver, but then further specify: "If such defendant waives the right to counsel but refuses to execute such waiver, the Court shall so certify in a form substantially as set out in Form Number 2A attached hereto."⁸⁵

I

Gideon in terms merely extends to the states the right under the sixth amendment to counsel "in all criminal prosecutions." *Douglas v. California*⁸⁶ limited its holding that the state must furnish counsel

⁸⁴ It seems arguable that the Supreme Court of the United States would hold a lengthy period of pre-trial incarceration—which a defendant with money would be able to avoid—to be a denial of constitutional rights. See *Bandy v. United States*, 82 Sup. Ct. 11, 13 (1961) (application before Mr. Justice Douglas for release on "personal recognizance" pending disposition of petitions for certiorari): "Further reflection has led me to conclude that no man should be denied release because of indigence. Instead, under our constitutional system, a man is entitled to be released on 'personal recognizance' where other relevant factors make it reasonable to believe that he will comply with the orders of the Court." See also Ares & Sturz, *Bail and the Indigent Accused*, 8 CRIME AND DELINQUENCY 12 (1962); Note, *A Study of the Administration of Bail in New York City*, 106 U. PA. L. REV. 693 (1958); Note, *Compelling Appearance in Court: Administration of Bail in Philadelphia*, 102 U. PA. L. REV. 1031 (1954).

⁸⁵ N.C. REGULATIONS RELATING TO APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS § 2.4 (1963).

⁸⁶ 372 U.S. 353 (1963).

on appeal, for the present at least, to the first appeal taken as a matter of right. Nevertheless, on the basis of the March 18 decisions and other prior ones such as *Griffin v. Illinois*³⁷ and *Smith v. Bennett*.³⁸

It may well be that we are moving into a period where the courts will feel that the state must furnish counsel to every indigent person who faces the possibility of the loss of his liberty or faces other serious criminal sanctions.³⁹

Right to counsel under the sixth amendment is almost surely applicable at the time of sentencing as well as at trial,⁴⁰ and it has been posited as desirable in parole and probation revocation hearings.⁴¹

North Carolina's Post-Conviction Hearing Act⁴² has, since its enactment in 1951, provided for appointment of counsel for indigent prisoners.⁴³ The third major 1963 act amended section 15-219 of the General Statutes to provide that "the court shall fix the compensation to be paid counsel in accordance with the provisions of G.S. 15-5, which compensation shall be paid by the State as provided in said section."⁴⁴ Formerly, the counsel appointed to repre-

³⁷ 351 U.S. 12 (1956).

³⁸ 365 U.S. 708 (1961).

³⁹ National Ass'n of Attorneys General 34. Note the use of the word "person" instead of "defendant." Compare Address by Judge Hall, North Carolina Conference of Superior Court Judges, October 25, 1963, on file in Institute of Government Library: "[I]t does not seem that a Habeas Corpus proceeding is a criminal prosecution. Recent decisions of the United States Supreme Court, however, seem to indicate that a person without money who is involved in a criminal proceeding must be afforded the same advantages as a person with money...."

⁴⁰ See National Ass'n of Attorneys General 35; Kadish, *The Advocate and the Expert—Counsel in the Peno-Correctional Process*, 45 MINN. L. REV. 803, 807-08 (1961). See also *Nunley v. United States*, 283 F.2d 651 (10th Cir. 1960); *Martin v. United States*, 182 F.2d 225 (5th Cir. 1950).

Although they can be distinguished as based upon statutory rather than constitutional grounds, two very noteworthy recent holdings affirming the right to counsel during sentencing are *Corey v. United States*, 373 U.S. 169 (1963), and *United States v. Behrens*, 373 U.S. 162 (1963).

⁴¹ Kadish, *supra* note 40, at 832-36. In this connection the 1963 amendment strengthening the probationer's procedural rights under N.C. GEN. STAT. § 15-200.1 (Supp. 1963) should be noted.

⁴² N.C. GEN. STAT. §§ 15-217 to -222 (1953), as amended, N.C. GEN. STAT. §§ 15-217 to -219 (Supp. 1963).

⁴³ N.C. Sess. Laws 1951, ch. 1083, § 1.

⁴⁴ N.C. Sess. Laws 1963, ch. 1180. There is no language in the act making an appropriation or explicitly bringing appointments made pursuant to this act under the appropriation in N.C. Sess. Laws 1963, ch. 1080. Nevertheless, the reference to payment as provided in N.C. GEN. STAT. § 15-5 (Supp. 1963) is likely sufficient to serve as an incorporation by reference,

sent prisoners seeking a review of the constitutionality of their trials were to be paid by the counties.⁴⁵

There is still no statute relating to appointment of counsel in proceedings in which the proper method for testing the legality of a commitment (either before or after conviction) would be by writ of habeas corpus⁴⁶ rather than under the Post-Conviction Hearing Act. The same is also true of *coram nobis* hearings—to the extent that use of this writ has not been supplanted by the Hearing Act.⁴⁷ Presumably in these and other criminal (or quasi-criminal) proceedings to which the right of counsel may be extended,⁴⁸ counsel would be appointed by the judge even though there is no statutory pro-

thus making the \$500,000 annual appropriation which covers appointments under N.C. GEN. STAT. § 15-5 (Supp. 1963) applicable in this instance.

⁴⁵ N.C. Sess. Laws 1951, ch. 1083, § 1.

⁴⁶ See N.C. GEN. STAT. §§ 17-1 to -38 (1953).

⁴⁷ North Carolina Attorney General, Law Applicable to Habeas Corpus Proceedings, January 1, 1961, at 3 (unpublished memorandum to North Carolina Superior Court Judges in Institute of Government Library): "Because of certain decisions of the Supreme Court of the United States, prisoners frequently apply for Habeas Corpus under allegations that their constitutional rights have been denied during the progress of the trial. In our jurisdiction and at this time we are confident that the Writ of Habeas Corpus cannot be used for this purpose for the reasons which follow:

"(1) Since the enactment of the North Carolina Post-Conviction Hearing Act... all constitutional questions, both State and Federal, must be raised in this proceeding, and Habeas Corpus is not the remedy for such review....

"(2) Prior to the enactment of the North Carolina Post-Conviction Hearing Act, it would seem that Habeas Corpus was not the proper remedy to raise the question of failure to appoint counsel... but the question could be raised by a Writ of Error *Coram Nobis*.... However, it would seem that the North Carolina Post-Conviction Act has settled the matter."

Compare the lengthy historical review by Mr. Justice Brennan of the writ of habeas corpus and its function in testing constitutional defects in *Fay v. Noia*, 372 U.S. 391, 399-415 (1963).

⁴⁸ National Ass'n of Attorneys General 32 raises the following questions:

"1. After judgment becomes final, what further assistance of counsel is the indigent defendant entitled to?

- a) in collateral attack proceedings
- b) at the time of sentencing
- c) at revocation of his probation or parole

"2. Must counsel be supplied an indigent in juvenile court proceedings, administrative sanction hearings, etc.?

"3. Must counsel be supplied the indigent whenever he faces the possibility of loss of liberty or other criminal sanction?

- a) in contempt of court proceedings
- b) in revocation of bail proceedings
- c) in proceedings against an impoverished defendant who fails to comply with a court order of support or a court order requiring the payment of a money judgment"

vision for compensation.⁴⁹ This has long been done in federal court,⁵⁰ and it is held in the majority of state courts that lawyers as officers of the court have a duty to serve when appointed whether or not they will be paid.⁵¹

An important recent study concluded that there are six standards by which a system affording representation for destitute persons accused of crime should be measured.⁵² These standards are set out below and the North Carolina procedure evaluated in their light.

A

The system should provide counsel for every indigent person who faces the possibility of the deprivation of his liberty or other serious criminal sanction. North Carolina's system seems almost deliberately ambiguous on this point. *Gideon* involved a felony trial, but the opinion of the Court bases the decision on such broad grounds that many persons feel it will be construed to extend the right to counsel to any trial in which the defendant faces a live possibility of imprisonment upon conviction.⁵³ Section 15-4.1 of the General Statutes au-

⁴⁹ See Address by Judge Hall, North Carolina Conference of Superior Court Judges, October 25, 1963, on file in Institute of Government Library.

⁵⁰ For an exhaustive analysis of the existing federal system of appointing uncompensated counsel, see Note, *The Representation of Indigent Criminal Defendants in the Federal District Courts*, 76 HARV. L. REV. 579 (1963).

⁵¹ See Annot., 130 A.L.R. 1439 (1941).

⁵² ASS'N OF BAR, CITY OF NEW YORK, EQUAL JUSTICE FOR THE ACCUSED 56 (1959).

⁵³ *Gideon v. Wainwright*, 372 U.S. 335 (1963). The majority opinion in *Gideon* said that the sixth-amendment right to counsel was part of the concept of ordered liberty applicable to the states through the due process clause of the fourteenth amendment. The indication in the concurring opinion of Mr. Justice Harlan that the holding may be applicable only to "offenses which . . . carry the possibility a substantial prison sentence," *id.* at 351, finds no substantial support in the language and tone of the opinion of the Court. It is therefore beneficial to inquire into the scope given the sixth amendment in federal courts.

Strangely enough, there are no definitive rulings in this area. By court rule, counsel has long been available to indigents in all cases before the federal district courts. FED. R. CRIM. P. 44. And *Evans v. Rives*, 126 F.2d 633 (D.C. Cir. 1942), seems to say that indigents are entitled to appointment of counsel even in cases involving minor offenses. But see *Kamisar, Betts v. Brady Twenty Years Later: The Right to Counsel and Due Process Values*, 61 MICH. L. REV. 219, 268 n.210 (1962), suggesting a limitation on the holding in *Evans v. Rives*. *Kamisar* suggests that a more apposite line may be the one previously drawn whereby the constitutional privilege of trial by jury is held not available as to trials of "petty offenses." See *District of Columbia v. Clawans*, 300 U.S. 617 (1937); *District of Columbia v. Colts*, 282 U.S. 63 (1930).

Despite *Evans v. Rives*, there has been no systematic provision for ap-

thorizes discretionary appointment of counsel in misdemeanor cases; superior court judges will thus be able to tailor their practice to the federally-imposed requirement.

Inferior court judges often impose sentences of imprisonment in misdemeanor cases tried by them for periods up to two years.⁵⁴ Both the new assignment act and the regulations are silent as to appointment of counsel in inferior courts.⁵⁵ There is, of course, nothing clearly prohibiting a county or district bar from working out its plan so as to include representation for indigents tried for the more serious misdemeanors in inferior courts, but such a system would be difficult to administer under the regulations as they are presently written. The judge must determine indigency before assigning counsel. Which judge—superior court judge or inferior court judge?⁵⁶

pointment of counsel in minor criminal cases in the District of Columbia. The 1960 District of Columbia Legal Aid Act which is hailed as a "break-through," Cellar, *Federal Legislative Proposals to Supply Paid Counsel to Indigent Persons Accused of Crime*, 45 MINN. L. REV. 697, 709 (1961), in actuality applies to misdemeanors in the Municipal Court only if the punishment may be for one year or more. Cellar, *supra* at 710 n.34; *Hearings on the Criminal Justice Act of 1963 Before the Senate Committee on the Judiciary*, 88th Cong., 1st Sess. 196 (1963) [hereinafter cited as 1963 *Hearings*]. So far, however, the operations in Municipal Court "have been limited and sporadic, primarily for budgetary reasons." Note, *The Representation of Indigent Criminal Defendants in the Federal District Courts*, 76 HARV. L. REV. 579, 595 n.57 (1963).

As an augury of the future it is instructive to note that the currently proposed federal legislation for payment of counsel in federal court excludes "petty offenses" as defined in 18 U.S.C. § 1 (1958) ("any misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than \$500, or both"). 1963 *Hearings* 3-4. As to the difficulty of defining "petty offenses" in a more general context, see Kamisar, *supra* at 270 n.212.

The most recent major study of state criminal procedure has been by the Joint Committee to Revise the Illinois Criminal Code. TENTATIVE FINAL DRAFT, PROPOSED ILL. CODE OF CRIMINAL PROCEDURE, 1963 § 49-4 (1962), authorizes the furnishing of counsel to indigents apparently in all criminal cases. The only distinction made is between capital and noncapital cases. Counsel are to be appointed to represent capital defendants; the public defender, if there is one, must represent indigents in all noncapital cases.

⁵⁴ See *State v. Lee*, 247 N.C. 230, 100 S.E.2d 372 (1957); *State v. Driver*, 78 N.C. 423 (1878); Coates, *Punishment for Crime in North Carolina*, 17 N.C.L. REV. 203, 213-14 (1939).

⁵⁵ For a discussion of this problem, see Watts, *Right to Counsel: The Supreme Court Speaks*, Popular Government, Apr.-May, 1963, pp. 1, 3.

⁵⁶ 14 AM. JUR. *Criminal Law* § 174 (1938), states that "there is good authority to the effect that courts of record having criminal jurisdiction possess competent authority independent of statute to appoint counsel to defend paupers and other indigent persons charged with crime." Inferior courts above the justice-of-the-peace level are usually considered courts of

And, almost certainly, there would be no compensation of the counsel appointed to appear in inferior court.⁵⁷

B

The system should afford representation which is experienced, competent, and zealous. So far as experience and competency are concerned, North Carolina's system delegates the problem to the local bar. There will thus be inevitable variations among the communities of North Carolina. There is, of course, a need for flexibility because situations differ in the various county seats.⁵⁸ If there turn out to be many instances of district bars failing to develop a plan to ensure appointment of experienced and competent counsel, the State Bar could amend its regulations in the light of the best local experience and perhaps set out the details of several plans and require one of them to be followed.

Under the existing regulations, most communities will probably follow some modification of the New Jersey plan of assigning counsel, in which all or nearly all members of the bar are placed on a rotating panel for appointment.⁵⁹ The New Jersey plan has been criticized in that it can result in assignment of lawyers with little

record, but it is doubtful if the Supreme Court of North Carolina would concur that recorders and other inferior court judges have the inherent power to assign counsel. The 1963 legislation itself, which authorizes appointment of counsel by superior court judges, could possibly be invoked to exclude others from making appointments. *But see* note 20 *supra*.

⁵⁷ The provision now codified as N.C. GEN. STAT. § 15-5.2 (Supp. 1963) originally provided for taxing costs "in all criminal cases of record in the courts of this State...." S.B. 315 (Committee Substitute), 1963 Session, N.C. General Assembly. It was later amended to apply only to superior courts. Thus the fact that N.C. GEN. STAT. § 15-5 (Supp. 1963) does not explicitly limit the compensation payable under that section to counsel appearing in superior court is probably of no consequence. Furthermore, N.C. Sess. Laws 1963, ch. 1080 taken as a whole appears to refer solely to procedure in the superior courts.

⁵⁸ See ASS'N OF BAR, CITY OF NEW YORK, EQUAL JUSTICE FOR THE ACCUSED 79 (1959). Compare BROWNELL, LEGAL AID IN THE UNITED STATES 140 (1951). One of the proposed federal bills (S. 1057) provides for unrestricted choice of plan by each district court—with the approval of the judicial council of the circuit; another (S. 63) authorizes a choice between the assigned-counsel and public-defender systems, but requires approval of the judicial council of the circuit for any district having one or more cities of over 500,000 population *not* to adopt the public-defender system. 1963 *Hearings* 3-4.

⁵⁹ Except in cases presenting special circumstances, the assignment of counsel is from a master list of all attorneys practicing in the county. ASS'N OF BAR, CITY OF NEW YORK, EQUAL JUSTICE FOR THE ACCUSED 49 (1959).

background and experience in criminal matters.⁶⁰ Nevertheless, the New Jersey plan is superior to *ad hoc* appointment by the judge, which too often results in appointment of young and inexperienced members of the bar. To the extent that the district bar comes up with a plan which will provide counsel with background and experience in trial work, it will achieve the goal of experience and competency set under the above standard.⁶¹

Zeal is a more individual matter. Despite the undoubted altruism of many individual members of the bar, economic pressures almost surely dictate that on the average the sufficiency of the compensation received will affect the quality of representation provided.⁶² It is too early to evaluate the adequacy of the million-dollar appropriation for the biennium 1963-1965. Presumably the superior court judges awarding compensation will tailor to some extent the amounts of their awards to the availability of funds.⁶³

C

The system should provide the investigatory and other facilities necessary for a complete defense. Almost all systems based upon

⁶⁰ *Id.* at 50; N.J. ADMINISTRATIVE OFFICE OF THE COURTS, REPORT ON THE ASSIGNED COUNSEL SYSTEM at iii-iv (1955).

⁶¹ One plan favored by some judges is to appoint only a minimum number of attorneys from the panel to represent indigents during each term of court. Thus, each attorney will receive compensation from the state for a number of cases and will probably find it more nearly worth his while to be on hand in court than it would otherwise be. It is said to be necessary for at least two of the group selected to be attorneys with substantial experience in criminal matters in order to guarantee adequate representation in serious or complex cases that may arise. Over a period of time, of course, the granting of continuances and the consequent return of appointed counsel to defend individual cases at later terms of court will dilute the efficiency of this plan somewhat, but this will undoubtedly be true of any plan.

One interesting aspect of the proposed federal legislation is that under S. 63, 88th Cong., 1st Sess. (1963), the public defender, unless otherwise provided by the Judicial Conference of the United States, must have practiced for five years or more before the bar of the jurisdiction in which the district court is located. Apparently assistant public defenders and appointed counsel would not have to meet this experience requirement. 1963 *Hearings* 3.

⁶² See Note, *The Representation of Indigent Criminal Defendants in the Federal District Courts*, 76 HARV. L. REV. 579, 588 (1963).

⁶³ The point has been argued by some lawyers that N.C. GEN. STAT. § 15-5 (Supp. 1963) itself sets out the standard for compensation: "[R]easonable and commensurate with the time consumed, the nature of the case, the amount of fees usually charged for such cases in the county or locality." On this basis awards lower than the minimum fees in force in the community have on occasion been mildly protested, but such protests appear to have occurred only in a small number of cases.

assignment of counsel are weak when it comes to providing investigatory facilities. Legal aid and defender systems using the "law office" approach⁶⁴ (as opposed to a lone defender in court all the time)⁶⁵ are the only ones which provide any uniform availability of these services.

The judge in compensating assigned counsel can surely adjust the compensation to cover out-of-pocket expenses incurred by counsel, and also award higher amounts to lawyers exceeding the average in diligence and time spent in investigation and preparation, but judges will have to impose a ceiling at some point if only because of the conservative prior tradition established when compensation (in capital cases) was paid by the counties. The system, it can be said, will thus in many instances tend to discourage assigned counsel from making investigations.

D

The system should come into operation at a sufficiently early stage of the proceedings so that it can fully advise and protect and should continue through appeal. Our system does continue through appeal to the Supreme Court of North Carolina, but perhaps its weakest area lies in its failure to insure that counsel will be appointed at the earliest possible moment.⁶⁶

E

The system should assure undivided loyalty by defense counsel to the indigent defendant. As indicated above, the sufficiency of

⁶⁴ ASS'N OF BAR, CITY OF NEW YORK, EQUAL JUSTICE FOR THE ACCUSED 51, 70, 73-74 (1959).

⁶⁵ See *id.* at 52.

⁶⁶ In this connection note that N.C. GEN. STAT. § 15-87 (1953) grants the right to counsel at preliminary examination. This raises the distinct possibility that indigents so examined would have the right to representation by appointed counsel. In practice, though, a full-dress preliminary examination of the type outlined in N.C. GEN. STAT. §§ 15-85 to -101 (1953) is a rare occurrence. *But cf.* *White v. Maryland*, 373 U.S. 59 (1963); *Hamilton v. Alabama*, 368 U.S. 52 (1961). See also FELLMAN, *THE DEFENDANT'S RIGHTS* 123 (1958).

PRELIMINARY DRAFT OF PROPOSED AMENDMENTS TO FEDERAL RULES OF CRIMINAL PROCEDURE 5(b) and 44 (Dec. 1962), would make procedural changes designed to secure much earlier assignment of counsel in the federal system than at present. A feature of proposed Rule 44(b) is the authorization of appropriate local procedures to be established in each district, including assignment of counsel by commissioners or by methods not requiring the presence of the defendant in court at the time of the assignment.

compensation received by counsel will likely have an effect upon the quality of representation. But, from the standpoint of undivided loyalty, the North Carolina system should prove quite satisfactory. Some questions arise as to loyalty where an *ad hoc* assignment system depends upon the unrestricted choice of the trial judge,⁶⁷ but the formulation of a plan for assignment by the district bar tends to overcome this problem.

F

The system should enlist community participation and responsibility. Placing the responsibility for the plan of assignment upon the members of the district bar gives more of a sense of community participation than if judges were in complete control of the assignment process. A public defender paid by tax money from everyone might in theory be considered a community responsibility, but in practice there may be even less community participation in a public-defender system than in North Carolina's present one. Perhaps the ideal system from this standpoint is the mixed private-public defender system where a defender's office or panel of legal aid attorneys is supported in part by tax funds and in part by contributions from private individuals and agencies.⁶⁸

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⁶⁷ ASS'N OF BAR, CITY OF NEW YORK, EQUAL JUSTICE FOR THE ACCUSED 67 (1959).

⁶⁸ This system is perhaps the current favorite of legal-aid advocates. See ASS'N OF BAR, CITY OF NEW YORK, EQUAL JUSTICE FOR THE ACCUSED 93-94 (1959); Pollock, *Equal Justice in Practice*, 45 MINN. L. REV. 737, 752 (1961). The new Legal Aid Agency for the District of Columbia is created by federal act and "supported by federal appropriations, but is governed by a private board of trustees which serves without pay." Note, *The Representation of Indigent Criminal Defendants in the Federal District Courts*, 76 HARV. L. REV. 579, 595 (1963). See also Mecklenburg County, N.C., Twenty-Sixth Judicial District, Report of Committee to Investigate Creation of Office of Public Defender, Mar. 11, 1963 (on file in Institute of Government Library).

The author has evaluated the competing systems in WATTS, CHANGES IN CRIMINAL LAW AND PROCEDURE ENACTED BY THE 1963 GENERAL ASSEMBLY 8-9 (1963) as follows: "Persons who view the various possible ways of securing lawyers for defendants who cannot hire their own from the standpoint of the defendant and the orderly administration of justice usually favor the use of the public defender over all competing methods. Where there is a substantial volume of cases, the public defender gives the best representation for the least money. There is some evidence, though, that the public-

defender system works best in the more populous areas, and several states have permissive legislation as to appointment of a public defender on a county- or district-option basis.

"Another system in recent favor has provided for subsidization of private legal aid societies with public funds. The argument is made that private lawyers will have less tendency to pull their punches in appearing for defendants than state-paid public defenders would. Experience elsewhere has not usually borne out this claim; judges, it should be remembered, are impartial even though paid by the same governmental unit that pays the prosecuting attorneys.

"The main reasons why public defenders and private defenders from legal aid societies (whether aided by public money or not) are usually favored over the system of having the judge appoint counsel (whether compensated or not) as follows:

"(1) counsel can usually be assigned to a case at a much earlier stage;

"(2) where there is any volume, the defender system is cheaper per case;

"(3) effective investigative staffs can be built up and used without great cost in any individual case where numerous cases all come to the same office; and

"(4) public (or private) defenders, being specialists in criminal defense matters, give better representation than the average appointed lawyer would.

"Members of the bar often oppose the defender systems because they concentrate a large area of practice in the hands of a few specialist attorneys. And, where a particular defender is not a very good lawyer, large numbers of indigent defendants would inevitably be the victims of a system that would not permit them to secure better representation. On the other hand, judges appointing counsel could assess the nature and difficulty of particular cases and assign counsel accordingly."

STATUTORY COMMENT

1963 Mental Health Amendments

I. INTRODUCTION

Mental illness is considered by many to be the nation's number one health problem. Statistics support this position. One in every ten persons in the United States is suffering from some form of mental illness. One in every twelve persons can expect, at sometime in his life, to be hospitalized for a mental condition. Slightly more than one out of every two hospital beds in the United States is occupied by a mental patient.¹ Thus, it is not surprising that the medical profession, legal profession, and legislative bodies have become increasingly concerned about the status of the laws relating to the hospitalization, care and treatment of the mentally ill.²

The late Senator Thomas J. Hennings once observed that: "The entire field under which the law has the right to deprive a mentally ill person of his liberty has been the most neglected in the chronicles of American law."³ The critical nature of the problem has been recognized by both Congress and the states. Congressional concern is demonstrated by the fact that extensive hearings were recently held before a Senate subcommittee.⁴ In 1950 the Council of State Governments and the Federal Security Agency prepared a "Draft Act"

¹ These figures were compiled in January, 1959, by the National Committee Against Mental Illness, Inc. See Slovenko & Super, *The Mentally Disabled, the Law and the Report of the American Bar Foundation*, 47 VA. L. REV. 1366 (1961) [hereinafter cited as Slovenko & Super]. See also PATIENTS IN MENTAL INSTITUTIONS—1949, at 22 (Public Health Service Pub. No. 233, 1952).

² See Ross, *Commitment of the Mentally Ill: Problems of Law and Policy*, 57 MICH. L. REV. 945 (1959).

³ AMERICAN CIVIL LIBERTIES UNION, 40TH ANN. REP. 58 (1960).

⁴ See *Hearings Before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary*, 57th Cong., 1st Sess. (1961) [hereinafter cited as 1961 *Hearings*]. These hearings were chaired by Senator Sam J. Erwin of North Carolina. One of the persons testifying before the Committee was Dr. Eugene A. Hargrove, Commissioner of Mental Health for North Carolina. Congressional concern for adequate mental health facilities is shown by the recent passage of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963. See 77 Stat. 282 (1963).

for the commitment and hospitalization of the mentally ill, which was transmitted to all state governors as a working model.⁵ Since 1954 at least twenty-three states have set up special committees to study various phases of the mental illness law.⁶ The most comprehensive of all mental health studies was a five-year nationwide study of the adequacy of laws relating to the mentally ill published in 1961 by the American Bar Foundation.⁷

That North Carolina is one of the states concerned with the laws relating to the hospitalization and treatment of the mentally ill is evidenced by the fact that the 1963 General Assembly passed extensive legislation relating to this area.⁸ The purpose of this comment is to discuss the principal changes in our law brought about by the 1963 amendments.

II. STATE DEPARTMENT OF MENTAL HEALTH

The first of the 1963 mental health acts to be discussed is chapter 1166.⁹ It created a new State Department of Mental Health, with a new State Board of Mental Health as the policy making body for the Department, replacing the Hospitals Board of Control. The new State Department of Mental Health is given jurisdiction "over all phases of mental health in North Carolina to the extent provided in this chapter including that heretofore vested by law in the State Hospitals Board of Control and in all other state agencies with respect to mental health."¹⁰ The Department, therefore, has jurisdiction over all of the State's public mental institutions¹¹ (except the Psychiatric Wing of North Carolina Memorial Hospital),¹² super-

⁵ See A DRAFT ACT GOVERNING HOSPITALIZATION OF THE MENTALLY ILL (Public Health Service Pub. No. 51, rev. ed. 1952). A brief summary of the act, by one of its authors, is set forth in Felix, *Hospitalization of the Mentally Ill*, 107 AM. J. PSYCHIATRY 712 (1951).

⁶ See Slovenko & Super 1367.

⁷ LINDMAN & MCINTYRE, *THE MENTALLY DISABLED AND THE LAW* (1961) [hereinafter cited as LINDMAN & MCINTYRE]. For a discussion of the findings and recommendations of this study, see Slovenko & Super 1366.

⁸ Some of this legislation, especially the act creating the State Department of Mental Health, was recommended after extensive study by the Commission on Reorganization of State Government. See COMMISSION ON REORGANIZATION OF STATE GOVERNMENT, *STATE AGENCIES* (1962).

⁹ N.C. Sess. Laws 1963, ch. 1166.

¹⁰ N.C. GEN. STAT. § 122-1 (Supp. 1963).

¹¹ *Ibid.*

¹² Although the language of N.C. GEN. STAT. § 122-1 (Supp. 1963) appears to be sufficiently broad to include the Psychiatric Wing of North Carolina Memorial Hospital under the jurisdiction of the State Department of

visory jurisdiction over all local mental health clinics¹³ (a function formerly assigned to the State Board of Health);¹⁴ and jurisdiction to establish standards for and license private mental institutions in the State¹⁵ (a function formerly assigned to the State Board of Public Welfare).¹⁶ The Department is also designated as the State's official Mental Health Agency for the purpose of receiving and allocating federal grants-in-aid for mental health purposes¹⁷ (a function formerly assigned to the State Board of Health).¹⁸

III. HOSPITALIZATION OF THE MENTALLY ILL

The second major mental health act to pass, Chapter 1184,¹⁹ rewrote the laws relating to the hospitalization²⁰ or admission of mentally ill, mentally retarded, and inebriate persons to the public and private mental institutions. The primary changes brought about by Chapter 1184 will be discussed under the headings of Statutory Arrangement, Terminology, The Alcoholic and Drug Addict, Rights of Hospitalized Patients, and Hospitalization Procedures.

A. Statutory Arrangement

Statutory research will be facilitated by the fact that Chapter 1184 brings together in a single chapter of the General Statutes (Chapter 122) all of the laws relating to the hospitalization of the mentally ill, mentally retarded, and inebriate. Thus, the portions of the law relating to the hospitalization, care and treatment of the

Mental Health, it is unlikely that the General Assembly intended to do this as other statutes indicating that the State Department of Mental Health does not have jurisdiction over this facility were not changed. See N.C. GEN. STAT. §§ 122-31.1, -65.2, -65.3 and -65.4 (Supp. 1963).

¹³ N.C. GEN. STAT. §§ 122-35.1 to -35.12 (Supp. 1963).

¹⁴ N.C. Sess. Laws 1957, ch. 1357, § 1.

¹⁵ N.C. GEN. STAT. § 122-72 (Supp. 1963).

¹⁶ N.C. Sess. Laws 1957, ch. 100, §§ 1, 4.

¹⁷ N.C. GEN. STAT. § 122-35.1 (Supp. 1963).

¹⁸ N.C. Sess. Laws 1957, ch. 1357, § 1.

¹⁹ N.C. Sess. Laws 1963, ch. 1184.

²⁰ N.C. GEN. STAT. § 122-36(d) (Supp. 1963) provides: "The words 'hospitalize' or 'hospitalization' shall mean those processes as promulgated in this chapter whereby an alleged mentally ill or mentally retarded person or alleged inebriate will be placed in an appropriate State hospital for the mentally ill or State residential center for the mentally retarded...." The customarily used words of "commit" and "commitment" are eliminated entirely by the new law. Therefore, the terms "hospitalize" and "hospitalization" will be used throughout this comment.

inebriate have been transferred from Chapter 35 to Chapter 122,²¹ and the laws relating to the hospitalization and treatment of the mentally retarded have been transferred from Chapter 116 to Chapter 122.²² In addition, the laws relating to the Mental Health Council and the Interstate Compact on Mental Health have been moved from Chapter 35 to Chapter 122.²³ These transfers facilitate research not only by bringing together in one chapter the laws relating to hospitalization of the mentally ill, mentally retarded, and inebriate, but also by removing from Chapter 35 laws unrelated to guardianship matters (the subject matter area covered by Chapter 35) and from Chapter 116 laws unrelated to Educational Institutions (the subject matter area covered by Chapter 116).

Clarity is also promoted by the fact that the procedures to be followed for each of the five types of hospitalization or admission (voluntary,²⁴ medical certification,²⁵ emergency²⁶ and judicial²⁷ in the case of the mentally ill and inebriate, and "upon application" in the case of the mentally retarded) are set out in separate articles.²⁸

²¹ N.C. Sess. Laws 1963, ch. 1184, § 35 provides that N.C. GEN. STAT. ch. 35, art. 6 (1958), entitled "Detention, Treatment, and Cure of Inebriates," is repealed; and N.C. Sess. Laws 1963, ch. 1184, § 35 provides that N.C. GEN. STAT. ch. 35, art. 8 (1958), entitled "Temporary Care and Restraint of Inebriates, Drug Addicts and Persons Insane," is repealed. References to the inebriate are found in articles 3-8 of N.C. GEN. STAT. ch. 122 (Supp. 1963).

²² N.C. Sess. Laws 1963, ch. 1184, § 8 provides that N.C. GEN. STAT. ch. 116, art. 13A (1958), entitled "Negro Training School for Feeble-Minded Children," is repealed. N.C. GEN. STAT. ch. 122, art. 9 (Supp. 1963), entitled "Centers for Mentally Retarded," is designed to be a substitute for the repealed articles in N.C. GEN. STAT. ch. 116 (1958) referred to above, and also to establish a statutory basis for the operation of other centers for the mentally retarded.

²³ N.C. Sess. Laws 1963, ch. 1184, § 13 makes these transfers. The Mental Health Council article is designated as N.C. GEN. STAT. ch. 122, art. 14 (Supp. 1963) and the Interstate Compact on Mental Health is designated as N.C. GEN. STAT. ch. 122, art. 13 (Supp. 1963).

²⁴ All states except Alabama provide for voluntary admissions. LINDMAN & McINTYRE 109.

²⁵ Twelve states provide for some form of admission by medical certification. LINDMAN & McINTYRE 68-69.

²⁶ All but thirteen states provide for emergency hospitalization. LINDMAN & McINTYRE 94-96.

²⁷ Many states provide more than one involuntary hospitalization procedure. LINDMAN & McINTYRE 49-75.

²⁸ "Voluntary Admission" is article 4 of chapter 122; "Admission by Medical Certification" is article 5 of chapter 122; "Emergency Hospitalization" is article 6 of chapter 122; "Judicial Hospitalization" is article 7 of chapter 122; and "Admission to Centers for the Retarded" is article 9 of chapter 122.

B. Terminology

Most of the states have modernized the terminology of commitment in the past 20 years, although many states still retain a distinct criminal flavor in their statutes.²⁹ The terminology used in Chapter 1184 gets away from the criminal connotations and places emphasis upon the medical aspects of mental illness. Also, it eliminates the use of different terms designed to state the same thing by combining various terms into one. Thus, the new act substitutes the words "mental illness" for all terms heretofore used to refer to persons with a mental illness.³⁰ The words "mentally retarded" are substituted for all terms heretofore used to refer to persons who are mentally retarded.³¹ The term "inebriate" is defined and covers addiction to both alcoholic drinks and habit-forming drugs.³² The words "hospitalize" and "hospitalization" are substituted for the words "commit" and "commitment."³³ The chapter authorizes hospitalization for a "minimum necessary period" rather than for an "indefinite period,"³⁴ and refers to the hospitalized person as a "patient" rather than an "inmate." Thus, the North Carolina terminology appears to have gone a long way toward eliminating the criminal connotations and substituting therefor language more consistent with medical procedures.³⁵

²⁹ See Ross, *Commitment of the Mentally Ill: Problems of Law and Policy*, 57 MICH. L. REV. 945, 949 (1959), where it is stated: "When a mental patient is 'arrested' by a 'sheriff' armed with a 'warrant,' 'charged' as a person 'accused of insanity' and after 'trial' committed to an 'institution' as an 'inmate,' it is not hard to see why the terminology used acts as an emotional shock which may seriously hinder treatment and recovery." For discussions of terminology in commitment statutes, see Comment, 56 YALE L.J. 1178, 1181 (1947).

³⁰ N.C. GEN. STAT. § 122-36(b) (Supp. 1963). Terms previously in the General Statutes to refer to mental illness included "mental disorder," "mental disease," "lunacy," "unsoundness of mind," and "insanity." See N.C. Sess. Laws 1957, ch. 1232.

³¹ N.C. GEN. STAT. § 122-36(c) (Supp. 1963). Terms previously used in the General Statutes to refer to mentally retarded persons included "mental defective," "feeble-minded," "idiot," and "imbecile." See N.C. Sess. Laws 1957, ch. 1232.

³² N.C. GEN. STAT. § 122-36(a) (Supp. 1963). An inebriate is defined differently from the way it was previously defined in N.C. GEN. STAT. § 35-30 (1958) in that the new definition includes addiction to "other habit forming drugs" as well as to narcotic drugs, and also requires that the individual "have lost the power of self-control" as well as be in need of restraint, care and treatment.

³³ N.C. GEN. STAT. § 122-36(d) (Supp. 1963).

³⁴ N.C. GEN. STAT. § 122-65 (Supp. 1963).

³⁵ There are other changes designed to make the procedure more medical

C. *The Alcoholic and Drug Addict*

Chapter 1184 defines an "inebriate" as "a person habitually so addicted to alcoholic drinks or narcotic drugs or other habit forming drugs as to have lost the power of self-control and that for his own welfare or the welfare of others is a proper subject for restraint, care, and treatment."³⁶ This new law, in what may be the most significant single feature of all the new laws relating to mental health, places the inebriate and the mentally ill person in the same status insofar as hospitalization procedures, costs of care, discharge procedures, and all other related matters are concerned. This constitutes a significant departure from the old law. Under the old law, for example, an inebriate could not voluntarily admit himself to a public mental institution without "first making arrangements with the superintendent for the actual cost of his detention and treatment."³⁷ Also, the involuntary admission procedures were different.³⁸

D. *Rights of the Hospitalized Patient*

A publication of the Council of State Governments states: "Patients while in a hospital should be protected in the enjoyment of personal rights to the extent consistent with required treatment and detention. This principle is based on the very simple . . . idea that an individual hospitalized for mental illness is only sick."³⁹ The framers of the new admissions law in North Carolina apparently agreed with this philosophy as there are several provisions in the law designed to protect the personal rights of the hospitalized patient. The chapter contains specific provisions relating to: (1) the authority of the patient to communicate by sealed mail with persons inside and outside the hospital, with the State Department of Mental

in nature and less traumatic for the alleged mentally ill person. For example, N.C. GEN. STAT. § 122-63 (Supp. 1963) now authorizes the clerk of court to designate a member of a hospital staff, a member of the staff of a local health department, or a member of the staff of a county welfare department (as well as an officer of the law), to serve the notice of hearing on the alleged mentally ill or inebriate person.

³⁶ N.C. GEN. STAT. § 122-36(a) (Supp. 1963).

³⁷ See N.C. Sess. Laws 1921, ch. 156, § 6.

³⁸ Compare N.C. Sess. Laws 1949, ch. 989 and N.C. Sess. Laws 1957, ch. 1258, with N.C. Sess. Laws 1899, ch. 1, as amended by N.C. Sess. Laws 1957, ch. 1232, N.C. Sess. Laws 1959, ch. 1002, and N.C. Sess. Laws 1961, ch. 511.

³⁹ COUNCIL OF STATE GOVERNMENTS, *THE MENTAL HEALTH PROGRAMS OF THE 48 STATES* 69 (1950).

Health, and with the court (if any) which ordered the patient's hospitalization;⁴⁰ (2) the right to receive visitors including the patient's attorney;⁴¹ (3) the right "to exercise all civil rights, including the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, and vote, unless he has been adjudicated incompetent under the provisions of chapter 35 of the General Statutes and has not been restored to legal capacity";⁴² (4) limitations on the use of restraining devices;⁴³ and (5) the fact that nothing contained in the chapter is to be construed to relieve from liability any husband, wife, guardian, or physician who unlawfully, maliciously and corruptly attempts to hospitalize a mentally ill or mentally retarded person.⁴⁴ Still another provision makes it clear that the provisions of chapter 35 of the General Statutes, relating to guardianship, and the provisions of chapter 122 of the General Statutes, relating to the hospitalization of mentally ill persons, shall have no effect upon one another.⁴⁵ Thus, it is clear that the intent of the General Assembly was to protect the hospitalized person from the loss of his civil rights unless the provisions of chapter 35 of the General Statutes, relating to incompetency and guardianship, are invoked.

E. Hospitalization Procedures

The new hospitalization chapter retains the four basic types of admissions for the mentally ill and inebriate that existed previously.⁴⁶ One significant change, however, undoubtedly brought about by the 1962 decision of the North Carolina Supreme Court in the case of

⁴⁰ N.C. GEN. STAT. § 122-46 (Supp. 1963).

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ N.C. GEN. STAT. § 122-47 (Supp. 1963).

⁴⁴ N.C. GEN. STAT. § 122-51 (Supp. 1963). There is evidence that the dangers of "railroading" are overly exaggerated. Dr. Eugene Hargrove, North Carolina Commissioner of Mental Health, has stated that in the seventeen years he has been associated with mental institutions he has not known of any cases of "railroading." 1961 *Hearings* 176. See also Slovenko & Super 1368.

⁴⁵ N.C. GEN. STAT. § 122-55 (Supp. 1963). For a discussion critical of *In re Wilson*, 257 N.C. 593, 126 S.E.2d 489 (1962), insofar as *Wilson* indicated that an appropriate procedure for determining the need for continued hospitalization would be incompetency proceedings, appointment of a guardian, and restoration to sanity procedures, see 41 N.C.L. Rev. 141 (1962).

⁴⁶ See note 28 *supra*.

In re Wilson,⁴⁷ is to increase the initial period of hospitalization for observation from 60 to 180 days, and to provide for a hearing at the end of the 180-day period if the superintendent of the hospital feels that the patient should be retained for further treatment.⁴⁸ If the recommendation of the hospital superintendent, at the end of the observation period, is that the patient's hospitalization needs to be continued for a minimum necessary period, the clerk of the court is to be so notified and a date is to be set for a hearing.⁴⁹ The place of the hearing is to be the hospital in which the patient is located.⁵⁰ Due notice of the time and place of the hearing is to be served upon the alleged mentally ill person or alleged inebriate. The new chapter then provides that "the alleged mentally ill or inebriate person may, if he so desires, waive the hearing by signing a statement to that effect and returning it to the clerk of court."⁵¹ If the hearing is waived, no hearing is to be held, but if the hearing is not waived, the clerk of court of the county in which the patient is hospitalized is to hold the hearing without unnecessary delay.

This raises a question as to the validity of the waiver of the

⁴⁷ 257 N.C. 593, 126 S.E.2d 489 (1962). In this case Mrs. Wilson was committed (following a hearing) for an observation period; at the end of the observation period she was committed for an indeterminate period on the basis of a report to the clerk of court by the hospital authorities; about two years later she applied for a writ of habeas corpus challenging the validity of the indeterminate commitment since it was without benefit of notice and hearing; the court held that she had been deprived of her liberty without due process of law because of the absence of notice and an opportunity to be heard.

⁴⁸ N.C. GEN. STAT. § 122-65 (Supp. 1963).

⁴⁹ The necessity for this second hearing will not arise in a large percentage of cases as most patients will be released within the 180-day observation period. Dr. Hargrove stated in March of 1961 that about 80 to 85 per cent of first admissions receive treatment and leave the hospital within 90 days. 1961 *Hearings* 176.

⁵⁰ N.C. GEN. STAT. § 122-65 (Supp. 1963). Under N.C. GEN. STAT. § 122-64 (Supp. 1963), all hearings concerning the hospitalization of patients already in a public or private mental institution or public general hospital, without prior judicial hospitalization, are to be held in the hospital where the patient is located if the controlling officer of the hospital so requests. This would appear to serve a desirable purpose by eliminating the necessity of returning the patient to his county of residence, sometimes many miles away, for the hearing. It should not, however, be used to make it more difficult for the patient to present any evidence he may wish to offer at the hearing.

⁵¹ N.C. GEN. STAT. § 122-65 (Supp. 1963). Iowa provides for a waiver of the hearing by the alleged mentally ill patient; California, Kansas, Massachusetts, and New York provide for a hearing only if requested. See LINDMAN & MCINTYRE 75.

hearing since it is a waiver signed by a patient who is in a mental institution and whose mental condition is such that the superintendent of the institution is recommending that the patient be retained in the institution. Related to this question is the question of whether or not notice and hearing are required to satisfy due process of law requirements when hospitalizing an alleged mentally ill or inebriate person. If notice and hearing are not required, the validity of a waiver provision would be enhanced. While the courts are split on this latter question,⁵² the North Carolina position, as stated in the case of *In re Wilson*,⁵³ appears to be clear. To hospitalize a person involuntarily in this state without notice and an opportunity for a hearing constitutes a denial of due process of law.⁵⁴ Thus, the argument that a patient may lawfully waive the hearing since due process does not require one is an empty argument in this state.

Returning to the question of the validity of the waiver under the circumstances described above, the study of the American Bar Foundation⁵⁵ indicates that there have been no cases passing upon the validity of a waiver of a hearing under a statute similar to the North Carolina waiver provision.⁵⁶ Since the North Carolina statute now takes the position that a patient's right to vote, transfer property and exercise other civil rights is in no way affected by his hospitalization, in the absence of incompetency proceedings or the appointment of a guardian, it could be argued that the individual would also have

⁵² The majority holds that hospitalization without notice and hearing does not violate due process if there is an immediate right of appeal or provisions for filing a writ of habeas corpus that will test the question of sanity. The minority requires notice and hearing. See 41 N.C.L. REV. 141, 143-44 (1962). See also LINDMAN & MCINTYRE 25-27; 1961 *Hearings* 92-3; Kadish, *A Case Study in the Significance of Procedural Due Process—Institutionalizing the Mentally Ill*, 9 W. POL. Q. 93, 111 (1956); Kadish, *Methodology and Criteria in Due Process Adjudication—A Survey and Criterion*, 66 YALE L.J. 319 (1957).

⁵³ 257 N.C. 593, 126 S.E.2d 489 (1962).

⁵⁴ For an excellent note critical of the holding in *Wilson* see 41 N.C.L. REV. 141 (1962). This note points out that *Wilson*, by putting North Carolina in the position of requiring two hearings (a position shared by no other state) notwithstanding realistic appeal procedures provided for by an enlarged writ of habeas corpus, fails to consider properly the medical interests of the patient.

⁵⁵ LINDMAN & MCINTYRE 25-27.

⁵⁶ All jurisdictions except California, Kansas, Massachusetts and New York provide for a hearing for judicial hospitalization, but many of these do not require the alleged mentally ill person to be present. LINDMAN & MCINTYRE 26.

the right to waive the hearing if he so desires.⁵⁷ This would seem to be a reasonable position for the clerks of court to take unless and until the North Carolina Supreme Court holds to the contrary. It would appear to be good practice, however, for the superintendent of the institution who is recommending that the mentally ill patient be retained also request that a guardian be appointed for that individual⁵⁸ if the superintendent is of the opinion that the individual does not, in fact, have the mental capacity to understand the nature of the notice, does not have the ability to form a valid judgment with regard to the waiver of the hearing, or does not have the ability to protect his interests at the hearing.

IV. OTHER 1963 MENTAL HEALTH LEGISLATION

Other 1963 legislation relating to the area of mental health:

(1) Authorizes the State Department of Mental Health to establish regulations governing the assignment of patients to the various institutions, and deletes the assignment of patients on the basis of race and residence;⁵⁹

(2) Defines a private hospital (as used in the article relating to private mental hospitals) to include psychiatric services in general hospitals licensed by the Medical Care Commission, but provides that no mentally ill person is to be involuntarily hospitalized in a general hospital unless such hospital has adequate facilities and qualified personnel for the proper observation, care and treatment of such person and the hospital director agrees to accept such mentally ill person;⁶⁰

(3) Makes Mr. John W. Umstead, Jr., Chairman Emeritus of the Hospitals Board of Control⁶¹ for life;⁶²

⁵⁷ This position is aided by the fact that the mentally ill person may always apply for a writ of habeas corpus and, in North Carolina, test not only the validity of his hospitalization but also the question of whether or not he is presently mentally ill. *In re Harris*, 241 N.C. 179, 84 S.E.2d 808 (1954). For a discussion of this point, see 41 N.C.L. REV. 141 (1962).

⁵⁸ N.C. GEN. STAT. § 35-3 (Supp. 1961) provides for the appointment of a guardian upon the basis of an affidavit from the superintendent of a state hospital in which the patient is hospitalized.

⁵⁹ N.C. Sess. Laws 1963, ch. 451. See also N.C. GEN. STAT. § 122-44 (Supp. 1963) which now provides, in part: "[T]he State Department of Mental Health may regulate admissions, having in view the curability of patients, the welfare of the institutions, and the exigencies of particular cases."

⁶⁰ N.C. Sess. Laws 1963, ch. 813.

⁶¹ Since this act was ratified prior to the act creating the State Board

(4) Creates a Medical Advisory Council to the State Board of Mental Health composed of fifteen members appointed by the Governor to serve three-year staggered terms. It is the duty of the council to make periodic reviews and studies of the operation, maintenance and administration of the facilities and programs of the State Board of Mental Health, and to make reports and recommendations from time to time to the Board;⁶³

(5) Creates a Council on Mental Retardation composed of eighteen persons⁶⁴ appointed by the Governor for four-year staggered terms. It is the function of the council to study ways and means of promoting public understanding of mental retardation problems, to determine the need for new state programs and laws in the field of mental retardation, and to make recommendations to the Governor on matters relating to mental retardation;⁶⁵

(6) Makes an appropriation to the State Department of Mental Health for financial assistance to local alcoholism programs, and to employ community education consultants to provide professional consultation, assistance and guidance to local alcoholism programs;⁶⁶ and,

(7) Makes additional appropriations to the State Department of Mental Health and Murdoch School, the University of North

of Mental Health and deleting the Hospitals Board of Control, a question is raised as to whether Mr. Umstead is Chairman Emeritus for life of the State Board of Mental Health. The answer to this is probably in the affirmative as the members of the Hospitals Board of Control became the initial members of the State Board of Mental Health to serve until the expiration of their terms to the Hospitals Board of Control. See N.C. GEN. STAT. § 122-1.1 (Supp. 1963).

⁶³ N.C. Sess. Laws 1963, ch. 712.

⁶⁵ N.C. Sess. Laws 1963, ch. 668.

⁶⁴ The Council is to be appointed by the Governor and composed of the following members: two persons who at the time of their appointment are members of the House of Representatives; two persons who at the time of their appointment are members of the Senate; a representative of the State Board of Health; a representative of the Department of Mental Health; a representative of the State Board of Public Welfare; a representative of the State Board of Education; a representative of the State Board of Correction and Training; a representative of the North Carolina Association for Retarded Children; and eight other persons who shall be selected without regard to employment or professional association.

⁶⁵ N.C. Sess. Laws 1963, ch. 669.

⁶⁶ N.C. Sess. Laws 1963, ch. 991. This act appropriates \$50,000 for each year of the biennium for financial assistance to the local programs, and approximately \$70,000 for each year of the biennium to provide professional consultation to the local programs.

Carolina, the Centers for the Mentally Retarded, the State Board of Education and State Department of Public Instruction, the State Board of Health, and to the Council on Mental Retardation, in order to facilitate research and training in the area of mental retardation.⁶⁷

V. CONCLUSION

With the creation of the State Department of Mental Health and State Board of Mental Health, thereby bringing together within one state department the various programs relating to mental health; the rewriting and clarification of the laws relating to the admission of mentally ill persons to mental institutions; the placing of the inebriate in the same category as the mentally ill; the clarification of the rights of hospitalized mental patients; and, the making of additional appropriations for the promotion of the treatment of the mentally ill, inebriate, and mentally retarded, the 1963 General Assembly appears to have laid the legislative basis for giant steps forward in the treatment of the mentally ill, inebriate, and mentally retarded in North Carolina.

RODDEY M. LIGON, JR.*

⁶⁷ N.C. Sess. Laws 1963, ch. 845. The appropriations for the biennium are as follows: State Department of Mental Health and Murdoch School \$377,960; University of North Carolina \$630,000; State Board of Education and State Department of Public Instruction \$420,092; State Board of Health \$354,000; and, Council on Mental Retardation \$40,000.

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